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EXAMINER

SHELEHEDA, JAMES R

ART UNIT	PAPER NUMBER
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2623

SHORTENED STATUTORY PERIOD OF RESPONSE	MAIL DATE	DELIVERY MODE
3 MONTHS	04/11/2007	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

Office Action Summary

Application No.

09/884,131

Applicant(s)

STALLWORTH, F. DAVID

Examiner

James Sheleheda

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 15 February 2007.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-29 and 44-48 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-29 and 44-48 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Response to Arguments

1. Applicant's arguments filed 2/15/07 have been fully considered but they are not persuasive.

a. On pages 12-13, applicant argues that claims 1-7, 9-13, 15-27 and 29 cannot be obvious over Schiller, as these claims recite features which are not taught or suggested by Schiller.

In response, it is noted that the previous action specifically indicated that Schiller did not disclose bundling content based upon geographic terrain. Thus, Schiller was *modified* to include this feature as an obvious variation. As creating niche content channels targeted to specific viewers is well known in the art. It is unclear as to why applicant feels that the rejection would not be obvious because the reference fails to disclose this particular feature, as the reference was never relied upon to include this feature.

Schiller specifically discloses wherein various content providers select which particular content they wish to have bundled together and transmitted to subscribers of their channel (column 3, lines 56-64 and column 4, lines 5-17). As television program selection is performed so as to specifically provide programming that viewers of the particular channel are interested in viewing, this clearly reads upon transmitting content of interest to viewers, as that is a basic premise of television broadcasts.

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In regards to bundling content based upon *geographic terrain*, and transmitting content to viewers interested in the *geographic terrain*, the previous action already indicated that Schiller did not specifically disclose this feature, as Schiller was modified to include selecting content based upon this particular programming niche.

b. On pages 13-14, applicant argues that Schiller fails to disclose distribution of content "having a full schedule of programming... [and] diverse subject matter with all the content related to the geographic terrain."

In response, as indicated in the previous action, Schiller clearly discloses having a full schedule of programming of diverse subject matter, as Schiller is providing television channels with an entire days worth of scheduled content for transmission. Further, as indicated in the previous action, Schiller merely fails to disclose selecting content which is all related to a particular geographic terrain. Schiller was then modified to include this feature, as bundling related content to target specific viewer groups is well known in the art. For example, Nickelodeon contains content which is selected so as to appeal to children. The Sci-Fi Channel contains content which is selected so as to appeal to Sci-Fi fans. Selecting content based upon geographic terrain simply allows one to target viewers interested in a particular terrain, such as fisherman being interested in boating/water programming.

Furthermore, in response to applicant's repeated assertions that it was unobvious to provide content related to a particular geographic terrain, applicant is hereby provided with further evidence.

www.h2o.com dated 5/17/01,
(<http://web.archive.org/web/20010517014549/http://www.h2o.com/>),

Thesailingchannel.com, dated 05/19/01
(<http://web.archive.org/web/20010519093103/http://thesailingchannel.com/>),

and www.ocean.com, dated 05/15/01,
(<http://web.archive.org/web/20010515183911/http://www.ocean.com/>),
all specifically disclose bundling content based upon the content being related to a particular geographic terrain and providing viewers with the content.

Thus, applicant's arguments are not persuasive, as providing bundled content related to a particular subject, such as a geographic terrain, was notoriously well known in the art.

c. In response to applicant's arguments on pages 14-17, see (a)-(b) above.

Claim Rejections - 35 USC § 103

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the

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invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. Claims 1-7, 9-13, 15-27 and 29 are rejected under 35 U.S.C. 103(a) as being unpatentable over Schiller et al. (Schiller) (5,499,046) (of record).

As to claim 1, Schiller discloses a system for delivering media content (see Figs. 1-3), comprising:

a producer producing content (column 1, lines 40-52); and
a channel producer (scheduler/distribution station; column 4, line 62-column 5, line 9 and column 5, line 66-column 6, line 3) that receives the content (column 6, line 64-column 7, line 11), aggregates the content into a bundle of content, the bundle of content having a full schedule of programming (full day of programming for the channel; column 1, lines 53-59 and column 4, lines 18-45), the bundle of content having diverse subject matter (column 1, line 40-column 2, line 11).

While Schiller discloses transmitting the content to an audience within and outside of a specific type of geographic terrain (as the content is transmitting on nationally available channels, such as HBO, etc...; see column 4, lines 18-34 and Fig. 2) and the audience having an interest in the content (wherein the audience choosing to view the received channel; column 11, lines 41-50), he fails to specifically disclose wherein the content is related to a specific type of geographic terrain.

It was well known in the art to put related programming on a single channel, by collecting and compiling, that which may previously exist on several channels. The collection of specialized kinds of programming on a single channel is the basis of numerous programming channel formats such as Nickelodeon, CNN, the Science-

Fiction Channel, the Family Channel, the Movie Channel, etc. Furthermore, the particular aggregation of programs based upon geographic terrain is known in the art (ex. The Water Channel, The Sailing Channel). The selection of geographic terrain is merely another grouping of existing programming material, depending simply upon the desires of the broadcasters. Therefore, it would have been obvious to one of ordinary skill in the art to utilize content which is related to a specific type of geographic terrain.

Furthermore, nonfunctional descriptive material cannot render nonobvious an invention that would have otherwise been obvious. In re Ngai, ³⁶⁷ F.3d 1336, 1339, 70 USPQ2d 1862, 1864 (Fed. Cir. 2004) (combining printed instructions and an old product into a kit will not render the claimed invention nonobvious even if the instructions detail a new use for the product).< Cf. In re Gulack, 703 F.2d 1381, 1385, 217 USPQ 401, 404 (Fed. Cir. 1983) (when descriptive material is not functionally related to the substrate, the descriptive material will not distinguish the invention from the prior art in terms of patentability).

For example, if the prior art suggests storing a song on a disk, merely choosing a particular song to store on the disk would be presumed to be well within the level of ordinary skill in the art at the time the invention was made. The difference between the prior art and the claimed invention is simply a rearrangement of nonfunctional descriptive material.

(see MPEP at 2106, Section VI).

Thus, it would have been obvious to one of ordinary skill in the art at the time of invention by applicant to modify Schiller's system to include wherein the content is

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related to a specific type of geographic terrain for the typical benefit of allowing the broadcaster to select and bundle the content as desired by viewers.

As to claim 2, Schiller discloses a media provider in communication with the channel producer (headend; see Figs. 1-3), wherein the channel producer transmits the bundle of content within and outside the specific type of geographic terrain (as the content is transmitting on nationally available channels, such as HBO, etc...; see column 4, lines 18-34 and Fig. 2) by transmitting the bundle of content to the media provider (column 6, lines 46-64).

As to claim 3, Schiller discloses wherein the media provider is a cable television operator (column 3, lines 56-63).

As to claim 4, Schiller discloses wherein the media provider distributes the bundle of content to a national audience (nationally available channels, such as HBO, etc...; see column 4, lines 18-34 and Fig. 2).

As to claim 5, Schiller discloses wherein the channel producer is a cable network (column 4, lines 5-18).

As to claim 6, see the rejection of claim 1 above.

As to claim 7, Schiller discloses wherein the channel producer produces additional programs related to the specific type of geographic terrain and includes the additional programs in the bundle of content (column 5, lines 10-18).

As to claim 9, Schiller discloses wherein the content is audio content and video content (column 3, lines 56-59), and the channel producer is a cable network (column 4, lines 5-18).

As to claim 10, Schiller discloses wherein the content is audio content, video content (column 3, lines 56-59) and data content (schedule data; column 4, line 62-column 5, line 8), and the channel producer is a computer network content provider (see Figs. 1-3 and column 4, lines 5-18).

As to claim 11, Schiller discloses a method for delivering media content (see Figs. 1-3), comprising:

receiving content (column 1, lines 40-52);

aggregating the content into a bundle of content, the bundle of content having a full schedule of programming (full day of programming for the channel; column 1, lines 53-59 and column 4, lines 18-45), the bundle of content having diverse subject matter (column 1, line 40-column 2, line 11).

While Schiller discloses transmitting the content to an audience within and outside of a specific type of geographic terrain (as the content is transmitting on

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nationally available channels, such as HBO, etc...; see column 4, lines 18-34 and Fig.

2) and the audience having an interest in the content (wherein the audience choosing to view the received channel; column 11, lines 41-50), he fails to specifically disclose wherein the content is related to a specific type of geographic terrain having a distinguishable physical feature.

It was well known in the art to put related programming on a single channel, by collecting and compiling, that which may previously exist on several channels. The collection of specialized kinds of programming on a single channel is the basis of numerous programming channel formats such as Nickelodeon, CNN, the Science-Fiction Channel, the Family Channel, the Movie Channel, etc. Furthermore, the particular aggregation of programs based upon geographic terrain is known in the art (ex. The Water Channel, The Sailing Channel). The selection of geographic terrain is merely another grouping of existing programming material, depending simply upon the desires of the broadcasters. Therefore, it would have been obvious to one of ordinary skill in the art to utilize content which is related to a specific type of geographic terrain.

Furthermore, nonfunctional descriptive material cannot render nonobvious an invention that would have otherwise been obvious. In re Ngai, ^{***}367 F.3d 1336, 1339, 70 USPQ2d 1862, 1864 (Fed. Cir. 2004) (combining printed instructions and an old product into a kit will not render the claimed invention nonobvious even if the instructions detail a new use for the product).< Cf. In re Gulack, 703 F.2d 1381, 1385, 217 USPQ 401, 404 (Fed. Cir. 1983) (when descriptive material is not functionally

related to the substrate, the descriptive material will not distinguish the invention from the prior art in terms of patentability).

For example, if the prior art suggests storing a song on a disk, merely choosing a particular song to store on the disk would be presumed to be well within the level of ordinary skill in the art at the time the invention was made. The difference between the prior art and the claimed invention is simply a rearrangement of nonfunctional descriptive material.

(see MPEP at 2106, Section VI).

Thus, it would have been obvious to one of ordinary skill in the art at the time of invention by applicant to modify Schiller's system to include wherein the content is related to a specific type of geographic terrain for the typical benefit of allowing the broadcaster to select and bundle the content as desired by viewers.

As to claim 12, Schiller discloses wherein the content is at least one of audio content and video content (column 3, lines 56-64).

As to claims 13 and 18, see the rejection of claim 11 above.

As to claim 15, Schiller discloses wherein the step of transmitting comprises delivering audio content and video content (column 3, lines 56-59) using a cable network (column 4, lines 5-18).

As to claim 16, Schiller discloses wherein the step of transmitting the bundle of content comprises delivering audio and video content (column 3, lines 56-59) from a cable network (column 4, lines 5-18) to a cable television operator (column 4, line 62-column 5, line 18), and wherein the cable television operator broadcasts the audio content and the video content (column 5, lines 25-31).

As to claim 17, Schiller discloses wherein the step of transmitting comprises transmitting audio content, video content (column 3, lines 56-59) and data content (schedule data; column 4, line 62-column 5, line 8) using a computer network content provider (see Figs. 1-3 and column 4, lines 5-18).

As to claim 19, Schiller discloses a system for delivering media content (see Figs. 1-3), comprising:

a channel producer (scheduler/distribution station; column 4, line 62-column 5, line 9 and column 5, line 66-column 6, line 3) receiving content (column 6, line 64-column 7, line 11); and

the channel producer aggregating the content into a bundle of content, wherein the bundle of content presents a full schedule of programming (full day of programming for the channel; column 1, lines 53-59 and column 4, lines 18-45) having diverse subject matter (column 1, line 40-column 2, line 11).

While Schiller discloses transmitting the content to an audience within and outside of a specific type of geographic terrain (as the content is transmitting on

nationally available channels, such as HBO, etc...; see column 4, lines 18-34 and Fig.

2) and the audience having an interest in the content (wherein the audience choosing to view the received channel; column 11, lines 41-50), he fails to specifically disclose wherein the content is related to a specific type of geographic terrain.

It was well known in the art to put related programming on a single channel, by collecting and compiling, that which may previously exist on several channels. The collection of specialized kinds of programming on a single channel is the basis of numerous programming channel formats such as Nickelodeon, CNN, the Science-Fiction Channel, the Family Channel, the Movie Channel, etc. Furthermore, the particular aggregation of programs based upon geographic terrain is known in the art (ex. The Water Channel, The Sailing Channel). The selection of geographic terrain is merely another grouping of existing programming material, depending simply upon the desires of the broadcasters. Therefore, it would have been obvious to one of ordinary skill in the art to utilize content which is related to a specific type of geographic terrain.

Furthermore, nonfunctional descriptive material cannot render nonobvious an invention that would have otherwise been obvious. In re Ngai, ³⁶⁷ F.3d 1336, 1339, 70 USPQ2d 1862, 1864 (Fed. Cir. 2004) (combining printed instructions and an old product into a kit will not render the claimed invention nonobvious even if the instructions detail a new use for the product).< Cf. In re Gulack, 703 F.2d 1381, 1385, 217 USPQ 401, 404 (Fed. Cir. 1983) (when descriptive material is not functionally related to the substrate, the descriptive material will not distinguish the invention from the prior art in terms of patentability).

For example, if the prior art suggests storing a song on a disk, merely choosing a particular song to store on the disk would be presumed to be well within the level of ordinary skill in the art at the time the invention was made. The difference between the prior art and the claimed invention is simply a rearrangement of nonfunctional descriptive material.

(see MPEP at 2106, Section VI).

Thus, it would have been obvious to one of ordinary skill in the art at the time of invention by applicant to modify Schiller's system to include wherein the content is related to a specific type of geographic terrain for the typical benefit of allowing the broadcaster to select and bundle the content as desired by viewers.

As to claim 20, Schiller discloses wherein the channel producer transmits the bundle of content within and outside the specific type of geographic terrain (as the content is transmitting on nationally available channels, such as HBO, etc...; see column 4, lines 18-34 and Fig. 2) by transmitting the bundle of content to the media provider for bundling with other content into a package of channels (column 6, lines 46-64).

As to claim 21, see the rejection of claim 19 above.

As to claim 22, Schiller discloses a system for delivering media content (see Figs. 1-3), comprising:

a producer producing content (column 1, lines 40-52); and
a channel producer (scheduler/distribution station; column 4, line 62-column 5, line 9 and column 5, line 66-column 6, line 3) in communication with the producer and receiving the content (column 6, line 64-column 7, line 11), the channel producer aggregating the content into a bundle of content having a full schedule of programming (full day of programming for the channel; column 1, lines 53-59 and column 4, lines 18-45), the bundle of content having diverse subject matter (column 1, line 40-column 2, line 11); and

a media provider in communication with the channel producer and receiving the bundle of content (column 6, lines 46-64).

While Schiller discloses transmitting the content to an audience within and outside of a specific type of geographic terrain (as the content is transmitting on nationally available channels, such as HBO, etc...; see column 4, lines 18-34 and Fig. 2) and the audience having an interest in the content (wherein the audience choosing to view the received channel; column 11, lines 41-50), he fails to specifically disclose wherein the content is related to coastal terrain.

It was well known in the art to put related programming on a single channel, by collecting and compiling, that which may previously exist on several channels. The collection of specialized kinds of programming on a single channel is the basis of numerous programming channel formats such as Nickelodeon, CNN, the Science-Fiction Channel, the Family Channel, the Movie Channel, etc. Furthermore, the particular aggregation of programs based upon geographic terrain is known in the art

(ex. The Water Channel, The Sailing Channel). The selection of geographic terrain is merely another grouping of existing programming material, depending simply upon the desires of the broadcasters. Therefore, it would have been obvious to one of ordinary skill in the art to utilize content which is related to a specific type of geographic terrain.

Furthermore, nonfunctional descriptive material cannot render nonobvious an invention that would have otherwise been obvious. In re Ngai, 367 F.3d 1336, 1339, 70 USPQ2d 1862, 1864 (Fed. Cir. 2004) (combining printed instructions and an old product into a kit will not render the claimed invention nonobvious even if the instructions detail a new use for the product).< Cf. In re Gulack, 703 F.2d 1381, 1385, 217 USPQ 401, 404 (Fed. Cir. 1983) (when descriptive material is not functionally related to the substrate, the descriptive material will not distinguish the invention from the prior art in terms of patentability).

For example, if the prior art suggests storing a song on a disk, merely choosing a particular song to store on the disk would be presumed to be well within the level of ordinary skill in the art at the time the invention was made. The difference between the prior art and the claimed invention is simply a rearrangement of nonfunctional descriptive material.

(see MPEP at 2106, Section VI).

Thus, it would have been obvious to one of ordinary skill in the art at the time of invention by applicant to modify Schiller's system to include wherein the content is related to coastal terrain for the typical benefit of allowing the broadcaster to select and bundle the content as desired by viewers.

As to claim 23, Schiller discloses wherein the channel producer is a cable network (column 4, lines 5-18).

As to claim 24, Schiller discloses wherein the media provider is a cable television operator (column 3, lines 56-63).

As to claims 25 and 26, see the rejection of claim 22 above.

As to claim 27, Schiller discloses a system for delivering media content (see Figs. 1-3) over a global computer network (column 4, lines 46-61), comprising:

a computer network content provider receiving content (scheduler/distribution station; column 4, line 62-column 5, line 9 and column 5, line 66-column 6, line 3); and

the computer network content provider aggregating the content into a bundle of content, the bundle of content having a full schedule of programming (full day of programming for the channel; column 1, lines 53-59 and column 4, lines 18-45) with diverse subject matter (column 1, line 40-column 2, line 11).

While Schiller discloses transmitting the content to an audience within and outside of a specific type of geographic terrain (as the content is transmitting on nationally available channels, such as HBO, etc...; see column 4, lines 18-34 and Fig. 2) and the audience having an interest in the content (wherein the audience choosing to

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view the received channel; column 11, lines 41-50), he fails to specifically disclose wherein the content is related to a specific type of geographic terrain.

It was well known in the art to put related programming on a single channel, by collecting and compiling, that which may previously exist on several channels. The collection of specialized kinds of programming on a single channel is the basis of numerous programming channel formats such as Nickelodeon, CNN, the Science-Fiction Channel, the Family Channel, the Movie Channel, etc. Furthermore, the particular aggregation of programs based upon geographic terrain is known in the art (ex. The Water Channel, The Sailing Channel). The selection of geographic terrain is merely another grouping of existing programming material, depending simply upon the desires of the broadcasters. Therefore, it would have been obvious to one of ordinary skill in the art to utilize content which is related to a specific type of geographic terrain.

Furthermore, nonfunctional descriptive material cannot render nonobvious an invention that would have otherwise been obvious. In re Ngai, ³⁶⁷ F.3d 1336, 1339, 70 USPQ2d 1862, 1864 (Fed. Cir. 2004) (combining printed instructions and an old product into a kit will not render the claimed invention nonobvious even if the instructions detail a new use for the product).< Cf. In re Gulack, 703 F.2d 1381, 1385, 217 USPQ 401, 404 (Fed. Cir. 1983) (when descriptive material is not functionally related to the substrate, the descriptive material will not distinguish the invention from the prior art in terms of patentability).

For example, if the prior art suggests storing a song on a disk, merely choosing a particular song to store on the disk would be presumed to be well within the level of

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ordinary skill in the art at the time the invention was made. The difference between the prior art and the claimed invention is simply a rearrangement of nonfunctional descriptive material.

(see MPEP at 2106, Section VI).

Thus, it would have been obvious to one of ordinary skill in the art at the time of invention by applicant to modify Schiller's system to include wherein the content is related to a specific type of geographic terrain for the typical benefit of allowing the broadcaster to select and bundle the content as desired by viewers.

As to claim 29, Schiller discloses wherein the computer network content provider distributes the bundle of content via a computer network (column 4, lines 46-61).

4. Claims 44-46 and 48 are rejected under 35 U.S.C. 103(a) as being unpatentable over Schiller in view of Shah-Nazaroff et al. (Shah-Nazaroff) (6,317,881) (of record).

As to claim 44, Schiller discloses a system for delivering media content (see Figs. 1-3), comprising:

creating content (column 1, lines 40-52); and

aggregating the content into a bundle of content, the bundle of content having a full schedule of programming (full day of programming for the channel; column 1, lines 53-59 and column 4, lines 18-45) with diverse subject matter (column 1, line 40-column 2, line 11).

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While Schiller discloses transmitting the content to an audience within and outside of a specific type of geographic terrain (as the content is transmitting on nationally available channels, such as HBO, etc...; see column 4, lines 18-34 and Fig. 2) and the audience having an interest in the content (wherein the audience choosing to view the received channel; column 11, lines 41-50), he fails to specifically disclose wherein the content is related to a specific type of geographic terrain and receiving communications from the viewers that initiate activities related to the specific type of geographic terrain.

It was well known in the art to put related programming on a single channel, by collecting and compiling, that which may previously exist on several channels. The collection of specialized kinds of programming on a single channel is the basis of numerous programming channel formats such as Nickelodeon, CNN, the Science-Fiction Channel, the Family Channel, the Movie Channel, etc. Furthermore, the particular aggregation of programs based upon geographic terrain is known in the art (ex. The Water Channel, The Sailing Channel). The selection of geographic terrain is merely another grouping of existing programming material, depending simply upon the desires of the broadcasters. Therefore, it would have been obvious to one of ordinary skill in the art to utilize content which is related to a specific type of geographic terrain.

Furthermore, nonfunctional descriptive material cannot render nonobvious an invention that would have otherwise been obvious. In re Ngai, ³⁶⁷ F.3d 1336, 1339, 70 USPQ2d 1862, 1864 (Fed. Cir. 2004) (combining printed instructions and an old product into a kit will not render the claimed invention nonobvious even if the

instructions detail a new use for the product).< Cf. In re Gulack, 703 F.2d 1381, 1385, 217 USPQ 401, 404 (Fed. Cir. 1983) (when descriptive material is not functionally related to the substrate, the descriptive material will not distinguish the invention from the prior art in terms of patentability).

For example, if the prior art suggests storing a song on a disk, merely choosing a particular song to store on the disk would be presumed to be well within the level of ordinary skill in the art at the time the invention was made. The difference between the prior art and the claimed invention is simply a rearrangement of nonfunctional descriptive material.

(see MPEP at 2106, Section VI).

Thus, it would have been obvious to one of ordinary skill in the art at the time of invention by applicant to modify Schiller's system to include wherein the content is related to a specific type of geographic terrain for the typical benefit of allowing the broadcaster to select and bundle the content as desired by viewers.

Additionally, in an analogous art, Shah-Nazaroff discloses a distribution system (Fig. 1) wherein users will answer a questionnaire related to viewed programming (column 6, lines 22-59) which then transmitted upstream (column 6, lines 48-59) for the typical benefit of providing a robust rating system allowing user feedback to identify interesting programming (column 1, line 45-60 and column 4, lines 20-54).

It would have been obvious to one of ordinary skill in the art at the time of invention by applicant to modify Schiller's system to include receiving communications from the viewers that initiate activities, as taught by Shah-Nazaroff, for the typical

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benefit of providing a robust rating system allowing user feedback to identify interesting programming.

As to claim 45, see the rejection of claim 44 above.

As to claim 46, Schiller and Shah-Nazaroff disclose wherein receiving the communications comprises receiving communications from the viewers through a telephone network (see Shah-Nazaroff at column 3, lines 16-22).

As to claim 48, Schiller and Shah-Nazaroff disclose wherein the activities include providing feedback regarding a program being broadcast (see Shah-Nazaroff at column 6, lines 22-59).

5. Claims 8, 14 and 28 are rejected under 35 U.S.C. 103(a) as being unpatentable over Schiller as applied to claims 1, 11 and 27 above, and further in view of Decinque (6,286,139) (of record).

As to claims 8, 14 and 28, while Schiller discloses wherein the content is audio content (column 3, lines 56-63) and wherein the channel producer utilizes the Internet (column 4, lines 46-61), he fails to specifically disclose a website.

In an analogous art, Decinque discloses a distribution system (Fig. 1) wherein content is accessed and distributed via a website (column 4, lines 18-46) for the typical

benefit of providing a simple web-based method of ordering and distributing content (column 1, lines 4-54).

It would have been obvious to one of ordinary skill in the art at the time of invention by applicant to modify Schiller's system to include a website, as taught by Decinque, for the typical benefit of providing a simple web-based method of ordering and distributing content.

6. Claim 47 is rejected under 35 U.S.C. 103(a) as being unpatentable over Schiller and Shah-Nazaroff as applied to claim 44 above, and further in view of Decinque (6,286,139) (of record).

As to claim 47, while Schiller and Shah-Nazaroff disclose wherein the content is audio content (see Schiller at column 3, lines 56-63) and wherein the channel producer utilizes the Internet (see Schiller at column 4, lines 46-61), they fail to specifically disclose a website.

In an analogous art, Decinque discloses a distribution system (Fig. 1) wherein content is accessed and distributed via a website (column 4, lines 18-46) for the typical benefit of providing a simple web-based method of ordering and distributing content (column 1, lines 4-54).

It would have been obvious to one of ordinary skill in the art at the time of invention by applicant to modify Schiller and Shah-Nazaroff's system to include a website, as taught by Decinque, for the typical benefit of providing a simple web-based method of ordering and distributing content.

Conclusion

7. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

8. The following are suggested formats for either a Certificate of Mailing or Certificate of Transmission under 37 CFR 1.8(a). The certification may be included with all correspondence concerning this application or proceeding to establish a date of mailing or transmission under 37 CFR 1.8(a). Proper use of this procedure will result in such communication being considered as timely if the established date is within the required period for reply. The Certificate should be signed by the individual actually depositing or transmitting the correspondence or by an individual who, upon information and belief, expects the correspondence to be mailed or transmitted in the normal course of business by another no later than the date indicated.

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Please refer to 37 CFR 1.6(d) and 1.8(a)(2) for filing limitations concerning facsimile transmissions and mailing, respectively.

9. Any inquiry concerning this communication or earlier communications from the examiner should be directed to James Sheleheda whose telephone number is (571) 272-7357. The examiner can normally be reached on 9:00-5:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Chris Kelley can be reached on (571) 272-7331. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

James Sheleheda
Patent Examiner
Art Unit 2623

JS


SCOTT E. BELIVEAU
PRIMARY PATENT EXAMINER